

it could be divisible. I believe this is his intent anyway, so that it would read, by striking out lines 11 and 12, and inserting in lieu thereof, "either six or twelve, as prescribed by law."

THE CHAIRMAN: I am not sure that the Chair follows you. You mean to substitute the language that you have just suggested, in lieu of the entire amendment?

DELEGATE JOHNSON: Well, Mr. Chairman, I really have two reasons.

THE CHAIRMAN: Not your reasons. I am trying to find out what you want to do. Are you suggesting the words that you mentioned as a substitution only for the first six words of the amendment or for the entire amendment?

DELEGATE JOHNSON: Only for the first six words.

Mr. Chairman, I might point out that it is my opinion that the amendment may be out of order in its present form, in that its wording does not fully state what happens. In other words, what is meant by a verdict of not less than five-sixths? It seems to me it should say that he should not be adjudged guilty or shall be adjudged guilty. It leaves me up in the air. It may be in order, but I am confused by it.

THE CHAIRMAN: The point may be well taken, although it is not an objection to the amendment.

Delegate Henderson, did you follow the point made by Delegate Johnson?

DELEGATE HENDERSON: Mr. Chairman, it seems to me that perhaps we could simplify this if we leave the word "twelve" in the amendment at this time and modify my amendment by striking out, "not less than six," leaving in, "upon a verdict of not less than five-sixths as prescribed by law."

Five-sixths of twelve would be the ten out of the twelve who could give the verdict, so it seems to me that that would be sufficient for my part.

THE CHAIRMAN: That would not meet Delegate Johnson's point.

Delegate Johnson's point is that the last clause of the section, with your amendment in either its present or modified form, would read as follows in the present form: "and to have a speedy and public trial by an impartial jury of not less than six, upon a verdict of not less than five-sixths, as prescribed by law."

In other words, the verdict of not less than five-sixths would refer only to trial. Your amendment is incomplete. It would have to read something like, to have a speedy and public trial by an impartial jury of not less than six persons, and shall not be adjudged guilty upon a verdict of less than five-sixths, or some similar phrase.

Do you follow the point?

DELEGATE HENDERSON: I would accept that.

THE CHAIRMAN: Delegate Churchill Murray.

DELEGATE E. C. MURRAY: May I direct a question to Judge Henderson?

THE CHAIRMAN: State your question.

DELEGATE E. C. MURRAY: Would he be willing to add whatever words are necessary to exclude capital crimes?

I do not think it was ever the intent to include capital crimes with a conviction of five-sixths, or whatever proportion he proposes. I know that the British have not done this.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I would have no objection to that, except that I think it can safely be left to the legislature. This does leave it to the legislature to prescribe what sort of crimes. In other words, it says, "as prescribed by law". It leaves it to them.

THE CHAIRMAN: Delegate Henderson, I do not believe that the language the Chair suggested would be very apt to carry out the thought either. I think that it should require a little more careful thought than we are able to give it at this point. Would you be willing to pass your amendment for the women in order to consider a possible re-phrasing of it?

DELEGATE HENDERSON: Very well, agreed.

THE CHAIRMAN: Is there any objection?

Further consideration of Amendment No. 9 is passed at this time.

Delegate Henderson, I take it we could also at the moment pass your Amendments S and O, which are open.

DELEGATE HENDERSON: That is right.

THE CHAIRMAN: Delegates James and Clark, do you want to offer your amend-